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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2555/2015*, **

Communication submitted by:	Sirozhiddin Allaberdiev (represented by counsel, Mukhtordzhon Makhkamov)
Alleged victim:	The author
State party:	Uzbekistan
Date of communication:	18 June 2014 (initial submission)
Document references:	Special Rapporteur's rule 97 decision, transmitted to the State party on 26 January 2015 (not issued in document form)
Date of adoption of Views:	21 March 2017
Subject matter:	Torture; arbitrary detention
Procedural issue:	Failure to substantiate claims
Substantive issues:	Freedom from torture; right to liberty and security of person; right to have adequate time and facilities to prepare one's defence; right to be tried without undue delay; right to obtain the attendance of witnesses and to examine them; right not to be compelled to testify against oneself
Articles of the Covenant:	7, 9 (1), and 14 (3) (b), (c), (e) and (g)
Article of the Optional Protocol:	2

1. The author of the communication is Sirozhiddin Allaberdiev, an Uzbek national born in 1976. He claims to be the victim of a violation by Uzbekistan of his rights under articles 7, 9 (1), and 14 (3) (b), (c), (e) and (g) of the Covenant. The Optional Protocol entered into force for Uzbekistan on 28 December 1995. The author is represented by counsel, Mukhtordzhon Makhkamov.

* Adopted by the Committee at its 119th session (6-29 March 2017).

** The following members of the Committee participated in the examination of the present communication: Tania María Abdo Rocholl, Yadh Ben Achour, Ilze Brands Kehris, Sarah Cleveland, Ahmed Amin Fathalla, Olivier de Frouville, Christof Heyns, Yuji Iwasawa, Bamariam Koita, Marcia V.J. Kran, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Anja Seibert-Fohr, Yuval Shany and Margo Waterval.

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The facts as submitted by the author

2.1. Between 3 and 8 August 2012, the author and four other persons (the author's brother, Mr. Yu., Mr. T. and Mr. Sh.) were unlawfully detained and tortured by officials of the Customs Administration of the Tashkent Region (hereinafter referred to as customs) and the National Security Service on customs premises and in the temporary detention facility of the Department of the Interior in the Tashkent Region (hereinafter referred to as the temporary detention facility). The author's detention during this period was unrecorded. He was tortured in order to obtain from him a self-incriminating statement in relation to a drug incident instigated by a Tajik citizen, A., and to disclose the location of the main physical evidence, a plastic bag containing marijuana. The author claims that the incident was instigated and the evidence planted by A.

Use of torture and access to counsel

2.2 On 3 August 2012, the author drove to the National Security Service premises in Bekabad, with his brother, to enquire about Yu.'s arrest in relation to the drug incident. He was immediately arrested. At 9 or 10 p.m., National Security Service officials drove him to the customs premises in Tashkent, where on the third floor of the building he was subjected to torture by National Security Service officials in order to obtain a confession. He was handcuffed, beaten with a truncheon, kicked and subjected to electric shocks. He lost consciousness on several occasions. He was tortured and detained on the customs premises until 4 August 2012.

2.3 On 3 August 2012, at around 11 p.m., the author's private counsel presented his warrant of attorney to the investigator in order to meet the author, but was denied access to him on the grounds that the author was not being detained on National Security Service premises.

2.4 On 4 August 2012, at around 6 to 8 p.m., the author was driven to the temporary detention facility. While detained, from 8 p.m. on 4 August until approximately 1 to 3 p.m. on 8 August 2012, the author was tortured — which included being beaten with a truncheon and kicked — and subjected to psychological pressure by customs and National Security Service officials. As a result, he lost consciousness several times.

2.5 On 8 August 2012, the author was transferred to the National Security Service investigation ward, where he was repeatedly tortured by operational officers of both the National Security Service and the investigation ward, as well as by specially trained hardcore criminals. The author was forced to undress in a special room, and was handcuffed and beaten on different parts of his body, including on his head, legs and kidneys, and his left ribs were broken. On several occasions, a tall and heavily built National Security Service officer, an Uzbek national, burned his body hair. The author was kept naked and handcuffed in a room with a refrigerator-like temperature and in a dark room with a device producing ultrasounds for six to eight hours. He would be able to identify the torturers. Although the author states that medical assistance was provided, he was never asked how the injuries had been inflicted.

2.6 On 8 August 2012, the author was indicted on drug-related charges under articles 25 and 276 (1) of the Criminal Code[1] and officially arrested. His counsel was invited to participate in investigative activities. At around 5 p.m., the author was brought to the investigator's office, but he was not allowed to meet confidentially with his counsel, despite their requests. The investigator questioned the author as a witness, suspect and accused under articles 25 and 276 of the Criminal Code. Even afterwards, the counsel was not given an opportunity to communicate with the author.

2.7 On 20 November 2012, the author was transferred to investigation ward No. 1 of the Ministry of the Interior. He was detained there until the case file was transferred to the court in April 2013. He was subjected to psychological pressure by co-detainees, at the

[1] Preparation for crime and criminal attempt (art. 25); and illegal production, purchase, storage, and other activities related to narcotic and psychotropic substances without purpose of sale (art. 276).

request of National Security Service operational officers, to extract a confession. Due to prolonged torture, the author made a suicide attempt by cutting his penis.

2.8 The injuries that the author sustained in detention have not been assessed by a medical expert, despite his requests. He claims to have two broken ribs and severe headaches. His claim about the use of torture is corroborated by his and his counsel's complaints to different authorities, as well as by his brother's statement that he saw and heard the author being beaten and dragged, unconscious, to his cell in the temporary detention facility.

Review of the author's complaints and of the criminal proceedings against him

2.9 The pretrial investigation of the author lasted from 8 August 2012 to 8 January 2013.

2.10 On 9 August 2012, the counsel requested the head of National Security Service to verify the lawfulness of his arrest and detention on the customs premises and in the temporary detention facility, to provide extracts from the registration logs specifying the admissions and visits and to establish the identity of his co-detainees. On 13 August 2012, the counsel requested the head of National Security Service to provide a similar extract from the registration logs of the Department of the Interior in Bekabad and of the temporary detention facility, as well as questioning records in respect of the author's co-detainees and bodily search and arrest records. On 10 August 2012, the counsel requested the senior investigator of National Security Service in the Tashkent Region (hereinafter referred to as the investigator) to release the author on bail; that request was rejected on 12 August 2012.

2.11 On 10 August 2012, Kibraisk District Court ordered the author's detention. On 13 August 2012, his counsel appealed the decision, claiming that the author's detention was unlawful and that he had been tortured from 3 to 8 August 2012. It is unclear whether the appeal has been examined.

2.12 The author and his counsel met on the premises of Kibraisk District Court on 10 and 13 August 2012 and during the author's confrontation with Mr. Yu. on 11 September 2012. The counsel filed multiple requests with the investigator to set up confidential meetings with the author but to no avail. No confidential meetings took place from 8 August to 20 November 2012.

2.13 On 7 November 2012, Kibraisk District Court extended the author's detention until 8 January 2013. On 27 November 2012, the author appealed that decision, claiming his detention to be unlawful. It is unclear whether the appeal has been examined. The author claims that his detention was not officially extended after 8 January 2013, and that between 8 January and 6 June 2013 he was continuously detained without any detention order.

2.14 On 13 December 2012, the counsel requested the investigator to verify the lawfulness of the author's arrest and detention. However, no action was taken on this request. The counsel also submitted a complaint to the investigator claiming that the author's confession had been obtained under torture, requesting further investigation and asking to question witness T. in order to confirm the author's innocence. No response was received. However, the author later found that the criminal file contained the investigator's decision of 14 December 2012 rejecting the complaint since incriminating evidence had been obtained through different sources, including from witnesses and from confrontations.

2.15 On 4 January 2013, the author was indicted under articles 28 (2), 246 (2) and 273 (5) of the Criminal Code.[2] On 4 March 2013, the prosecutor of the Tashkent region approved the indictment.

2.16 On 4 January 2013, the investigator severed criminal proceedings in relation to A. as his identity and whereabouts had not been established.

2.17 On 4 and 5 January 2013, the investigator altered the author's indictment and drew up a questioning record, in the absence of the author's counsel but in the presence of a

[2] Types of accomplices (art. 28); smuggling (art. 246); illegal production, purchase, storage and other activities related to narcotic and psychotropic substances with purpose of sale as well as sale thereof (art. 273).

lawyer unknown to the author. The author refused to sign the indictment and the questioning record in the absence of his counsel and requested his assistance. The investigator dismissed his request and recorded that the author had refused to sign the documents.

2.18 On 7 January 2013, the counsel submitted a complaint to the investigator requesting a medical examination of the author's injuries. On the same date, the investigator verbally informed the counsel that the author had been indicted on 4 January 2013, in the presence of another lawyer, and that the pretrial investigation had been completed. The counsel's request for a medical examination was rejected on these grounds.

2.19 On an unspecified date, the case file was transferred to Bekabad City Court. According to the court record, the first court hearing was scheduled for 25 March 2013 but was postponed to 28 March 2013 and then again to 19 April 2013, on the grounds that the accused and the counsel did not appear in court. The author claims that, in reality, the case file was transferred to the court on 11 or 12 April 2013, and the author and the counsel were only informed of the hearing on 19 April 2013.

2.20 On 29 April 2013, the counsel resubmitted a request for a medical examination of the author's injuries, which had not been considered by the court. On the same date, he requested the court to consider some documents inadmissible and asked to summon as witnesses the persons who had signed and approved those documents, namely officials of the temporary detention facility, police officers, customs officials and officials of the Department of the Interior in Bekabad who were on duty on the night of 3 August 2012. The court rejected the counsel's request on the grounds that the investigation had not identified those individuals as witnesses. The counsel asked the court to append to the case file his complaints and motions concerning the misconduct of the customs, police and National Security Service officials. The judge promised to consider the motions and to append them to the case file. However, this is not reflected in the court record. The counsel's later complaints about the inaccuracy of the court record were dismissed.

2.21 On 6 June 2013, Bekabad City Court found the author guilty and sentenced him to 17 years of imprisonment under articles 25, 28, 59, 246 (2) and 273 (5) of the Criminal Code.[3] The court found that on 2 August 2012 the author had attempted to buy 969.66 grams of marijuana from A., who had transported it from Tajikistan and hidden it, and that Mr. Yu., who had removed the drug from its storage place at the author's request, had been caught in the act by customs and National Security Service officials. According to the court's decision, on file, "despite the fact that the author did not confess guilt in order to avoid criminal liability and that Mr. Yu. stated that he had testified against the author because he had been tortured during the pretrial investigation, the court considers that the author's guilt is supported by material on file and witness statements". The author claims that the court proceedings were delayed deliberately and without justification. Only six persons were questioned in court, including Mr. Yu. (the co-accused), the author's brother, Mr. T. and Mr. Sh. (witnesses), and two police officers.

2.22 On 13 June 2013, the counsel appealed the conviction, claiming, inter alia, that the author had been arbitrarily detained and tortured and that not all witnesses had been questioned, and challenging the assessment of the evidence by Bekabad City Court. On an unspecified date, the counsel withdrew his appeal, pending the authorities' action on his multiple complaints about the use of torture and the author's unrecorded detention. As the authorities provided no response to the counsel's complaints, on 9 September 2013 the counsel submitted a cassation appeal to Tashkent Regional Court, claiming that the investigator had not allowed him to meet the author between 8 August and 20 November 2012 and that the investigator had not acted upon the complaints about the use of torture. The counsel also requested to summon witness T. and witness Sh. for questioning. On 10 October 2013, Tashkent Regional Court dismissed the cassation appeal as unfounded, rejected the request for additional witnesses to be summoned and upheld the decision of Bekabad City Court.

[3] Inflicting penalty in instance of multiple crime (art. 59).

2.23 The counsel submitted three requests for a supervisory review of the court decisions of 6 June and 10 October 2013. These were dismissed on 25 November 2013, 22 February 2014 and 9 April 2014, on the grounds that the first-instance court had classified the crime correctly and had imposed a sentence in accordance with the law.

2.24 The author submits that he has exhausted all available and effective domestic remedies and that the communication is not being examined under another procedure of international investigation or settlement. He requests that a violation of his Covenant rights be established and that he be retried in compliance with all Covenant guarantees.

The complaint

3.1. The author claims that the severe beatings and ill-treatment he sustained while in detention amount to torture, in violation of article 7 of the Covenant. As a result of the use of torture, he was compelled to testify against himself, in breach of article 14 (3) (g) of the Covenant.

3.2. Under article 9 (1) of the Covenant, the author claims that his detention from 3 to 8 August 2012 was unlawful and arbitrary as it was unrecorded. Furthermore his whole pretrial detention was unlawful, as pretrial detention is not envisaged for the crimes he was initially charged with. Detention for those crimes, which are punishable by less than three years' imprisonment, can be imposed only if certain circumstances listed in article 242 of the Code of Criminal Procedure are met,[4] which was not his case.

3.3 The author also claims that he was denied access to his counsel and could not prepare his defence, contrary to article 14 (3) (b) of the Covenant.

3.4 He claims that the pretrial investigation and court proceedings were protracted, in violation of article 14 (3) (c) of the Covenant.

3.5 Under article 14 (3) (e) of the Covenant, the author claims that he was not allowed to obtain the attendance and questioning of any witnesses on his behalf, whereas all witnesses on behalf of the prosecution were heard by the court. In particular, the counsel requested the attendance and questioning of the following witnesses: attesting witnesses, customs and National Security Service officials who drew up initial procedural documents, witnesses who planted the drugs, the expert who delivered the report of 3 August 2012, and officials of the temporary detention facility, customs officials and officials of the Department of the Interior in Bekabad who were on duty between 3 and 8 August 2012. Those witnesses knew that the criminal case against him had been fabricated but they drew up procedural documents in violation of the Code of Criminal Procedure.

State party's observations

4.1 On 16 April 2015, the State party submitted its observations on the merits of the communication. The State party disputes the author's allegation that his rights were breached during the investigation and court proceedings.

4.2 The State party submits that on 6 August 2012, the investigation department of the National Security Service in the Tashkent region launched criminal proceedings against Mr. Yu. and others on suspicion of the smuggling and illegal sale of drugs in large amounts. The investigation established that the author had conspired with A., whose identity was not

[4] Taking into custody (art. 242 of the Code of Criminal Procedure) (unofficial translation):

Taking into custody as a measure of restraint shall be imposed with regard to criminal cases for offences punishable by imprisonment for a term exceeding three years and unintended offences punishable by imprisonment for a term exceeding five years in accordance with the Criminal Code.

In special instances, this measure of restraint may be imposed with regard to criminal cases for intended offences punishable by imprisonment for a term less than three years and for unintended offences punishable by imprisonment for a term less than five years, in one of the following circumstances: the accused fled from the investigation and justice; the identity of the arrested suspect has not been established; the accused violated a measure of restraint applied previously; the arrested suspect or the accused has no permanent residence in Uzbekistan; the crime is committed while serving a sentence of arrest or imprisonment.

established during the investigation, and his relative Mr. Yu., with a view to transporting 969.66 grams of marijuana from Tajikistan to Uzbekistan to sell. On 3 August 2012, while retrieving the marijuana from the place where it was being stored, Mr. Yu. was caught red-handed, whereas the author fled. On 8 August 2012, the investigator ordered that the author be prosecuted. On the same day, the author was arrested and was placed in the National Security Service investigation ward.

4.3 The State party denies that the author was detained between 3 and 8 August 2012 and subjected to torture while in pretrial detention. He was admitted to the premises of the National Security Service only on 8 August 2012. Throughout his pretrial detention, he did not complain about the alleged torture to the investigator or his counsel; the administration of the detention facilities did not record any facts of torture either. The counsel's requests of 13 August 2012 and 7 January 2013 did not reach the National Security Service. The author was repeatedly informed of his rights and responsibilities as a suspect and detainee and he countersigned relevant records. His pretrial detention was in accordance with the law, notably article 221 (1) of the Code of Criminal Procedure.[5] According to article 242 (2) of the Code of Criminal Procedure, pretrial detention may be envisaged for intentional crimes punishable by less than three years' imprisonment.

4.4 The counsel's requests of 9 August and 13 December 2012 to examine the lawfulness of the author's arrest and detention were dismissed on 10 August and 14 December 2012 respectively, on the grounds that the National Security Service lacked competence to examine them. The counsel was advised instead to submit the request to the police or the prosecutor's office. The investigator's decision of 14 December 2012 was served on the counsel. On 12 August 2012, the investigator transmitted to the counsel a decision rejecting the counsel's request of 10 August 2012 for the author's release on bail, which had been made with a view to preventing further offending and interference with the administration of justice.

4.5 Concerning the lack of confidential meetings between the author and his counsel, no request for such meetings could have been received at 11 p.m. on 3 August 2012, as the investigator left his office at 8 p.m. On 8 August 2012, the author and his counsel met confidentially for one hour on the premises of the National Security Service, before the investigative activities took place. After the completion of the investigative activities, the author and his counsel were again given an opportunity to meet confidentially. They countersigned the order of 8 August 2012 for prosecution of the author as an accused person. When questioned as a suspect, the author indicated that he had met with his lawyer confidentially, which is reflected in the questioning record signed by the author. Between 8 August and 19 November 2012, several meetings with the counsel were held at the counsel's request, without any time limit. An interrogation and a face-to-face confrontation were also conducted during this period, in the counsel's presence. The counsel was also informed of the right to meet the author confidentially, without limitations on the number of meetings or on their duration.

4.6 The counsel was informed that the author's indictment would be completed, with the additional counts, on 4 January 2013. The counsel responded that he was attending a burial ceremony in another region for 10 days and therefore would agree to the appointment of another lawyer for the author by the investigator.

4.7 The State party rejects the author's claim under article 14 (3) (e) of the Covenant, since all persons who could have been cognizant of the events were questioned as witnesses. On 17 December 2012, at the counsel's request, the investigator questioned the author's brother, Mr. Sh. and Mr. T. The Code of Criminal Procedure, in its article 36, empowers the investigator to determine which investigative activities are necessary. The investigator also ordered that the operational department establish the identity of the accomplices, including A., in respect of whom criminal proceedings, for an additional investigation, were severed. In line with article 375 of the Code of Criminal Procedure, after finding that the evidence

[5] "A person suspected of having committed an offence may be apprehended only if there exist the following grounds: (1) the person is caught in the act of or immediately after committing the offence". Available from www.legislationline.org/documents/section/criminal-codes/country/55.

collected was sufficient to draw up an indictment, the investigator notified the accused and the counsel of the completion of the pretrial investigation, which demonstrates that the evidence collected in the case was sufficient. Having familiarized themselves with the case file, the author and the counsel submitted no request to question customs and National Security Service officials.

4.8 The author's guilt is supported by the entirety of evidence, including the drug detection record; the record of the seizure and weight of the physical evidence; the record of a violation of the customs legislation; the physical evidence (969.66 grams of marijuana); expert evidence; records of investigative activities; witness testimonies by Mr. Yu., Mr. T., Mr. Sh., Mr. Yus. and others; the guilty plea of the co-accused Mr. Yu., the cross-examination record etc. The investigation established that several incoming and outgoing calls to Tajikistan were made on 2 and 3 August 2012 from the phone number used by the author.

4.9 The State party also discards the author's claim that the pretrial investigation and court proceedings were protracted, as being unsubstantiated. Competent authorities received no complaint in this connection.

Author's comments on the State party's observations

5.1 On 15 June 2015, the author reiterated his claims in their entirety and challenged the State party's submissions.

Author's arrest and detention

5.2 The author provides further details on his detention from 3 to 8 August 2012. On 3 August 2012, the author and his brother were arrested. At around 8.40 p.m., the author's brother was released on the condition that he would bring the author's passport the next day. On 4 August 2012, the author's brother, accompanied by the counsel and by relatives of the detainees,[6] went to the customs building, as advised by an investigator. An official checked the author's brother's identity documents and let him enter the premises. Thereafter, he was detained. On 4 August 2012, at around 4 or 5 p.m., National Security Service officials brought the author, his brother, Mr. Yu., Mr. T. and Mr. Sh. to the Department of the Interior in the Tashkent Region. They were admitted to the temporary detention facility. On 8 August 2012, the investigator informed the counsel that the detainees would be brought to him by midday.

5.3 Between 3 and 8 August 2012, the author's counsel and relatives contacted daily the National Security Service and the Department of the Interior in the Tashkent Region, who denied that their relatives were being detained. During that period, relatives transmitted food parcels to the detainees.

5.4 A number of documents prove the author's detention between 3 and 8 August 2012: including testimonies by the author, his brother, Mr. T. and Mr. Sh., multiple motions and requests by them and the counsel, Mr. Yu.'s arrest record, expert evidence of 3 August 2012, a report by a customs official and the record of the author's questioning as an accused person. Relatives and lawyers of the detainees can testify that they awaited the detainees by the customs building, on 3 and 4 August 2012, and by the Department of the Interior in the Tashkent Region, between 4 and 8 August 2012.

5.5 The author claims that the State party's submission that he fled the crime scene on 3 August 2012, but was later arrested and detained in the temporary detention facility, proves that he was unlawfully detained from 3 to 8 August 2012. He disagrees that his arrest and detention were in accordance with the law. As the State party denies that he was arrested before 8 August 2012, it cannot be said that he was arrested under article 221 (1) of the Code of Criminal Procedure, that is, on the ground that he was caught in the act or immediately after committing the offence, on 3 August 2012. His detention was contrary to article 242 (2) of the Code of Criminal Procedure, as it does not meet any of the grounds for pretrial detention for intentional crimes punishable by less than three years' imprisonment.

[6] The author, Mr. Yu., Mr. T. and Mr. Sh.

Thus, the author's identity has been established, he has permanent residence in Uzbekistan, has no criminal record, has no drug or alcohol addiction, is referred to positively by his neighbours, is a father of four minor children and has two dependants with disabilities.

5.6 The complaints by the author and the counsel about the unlawful detention from 3 to 8 August 2012 remain unanswered, despite the existence of criminal liability for forced illegal deprivation of liberty, under the Criminal Code.

Use of torture

5.7 The author submits that the State party misinterprets his complaint about torture, by referring to the period as starting on 8 August 2012. The author reiterates that he was tortured on the customs premises on 3 and 4 August 2012 and in the temporary detention facility from 4 to 8 August 2012. He was also tortured after 8 August 2012, while in pretrial detention in the National Security Service investigation ward and in investigation ward No. 1 of the Ministry of the Interior.

5.8 He was tortured to extract a confession. He can recognize the officials from the detention facilities and the hardcore prisoners who tortured him. Their identity can also be established by checking the relevant documentation of the detention facilities. At every questioning he provided a detailed account of the torture inflicted. The testimonies of the author's brother and Mr. T., and the confrontation between the author and Mr. Yu., corroborate the author's statements. The author and his counsel filed a number of complaints about the use of torture, with different authorities, but no action was taken. Many such complaints were not appended to the case file. The authorities' reply that they studied the case file implies that they became familiarized with all the complaints. In court, the counsel resubmitted all complaints that were missing from the case file, including the request for a medical examination of the author's injuries. According to medical information, rib injuries resulting in cracks and fractures last for a lifetime and can be seen by means of a simple X-ray. Since the suicide attempt, the author has had a big scar on his penis. A doctor can confirm that the scar has not been medically treated. The author indicates that a medical examination can be conducted at the present time and expresses readiness to submit yet another request for such expertise.

Access to counsel

5.9 The author reiterates his claim concerning the lack of private meetings with his counsel. On 3 August 2012, the counsel received a warrant of attorney to represent him and transmitted it to the investigator. But the counsel and the author did not meet before 8 August 2012, for 10-20 minutes. However it was not a confidential meeting, as officials were waiting by the door, the room was equipped with video cameras and the conversation was recorded. The next meeting with the counsel took place in the court premises on 10 August 2012 while the court was deciding on the author's detention. The counsel was not authorized to approach the author before the beginning of the hearing. Another meeting took place in similar conditions in the appeal court on 7 November 2012. From then until the end of November 2012, the counsel was never given an opportunity to meet the author. At the end of November 2012, the investigator authorized the counsel to meet the author; only two or three meetings took place.

5.10 Starting from the end of November 2012, the counsel called the investigator daily in order to enquire about investigative activities with the author. The investigator promised to keep the counsel informed. On 5 January 2013, the counsel asked the investigator if he intended to conduct any investigative activities and informed him that he would be busy in the afternoon. The investigator replied that he might extend the author's detention for two more months. On 6 January 2013, the counsel was informed by Mr. Yu.'s lawyer that the charges against Mr. Yu. and the author had been altered, that the investigation had been completed and that it was possible to study the case file. On the same day, the author told the counsel that the investigator had informed him that the counsel had to attend a burial ceremony and therefore could not attend the investigative activities. The investigator did not allow the author to contact the counsel to verify that information. The author refused to participate in the investigative activities and did not sign any document.

The criminal proceedings against the author

5.11 The author submits that his conviction is based on inadmissible evidence and that he was found guilty in violation of the law. He challenges the assessment of the evidence carried out by the domestic courts. He was arrested and detained as a result of provocation by the authorities, who planted the drugs. The author and the four other detainees were tortured in order to extract statements about the location of the drugs. There is no evidence proving the author's guilt other than Mr. Yu.'s guilty plea and the author's confession obtained under torture. The court did not take into account the testimonies of the co-accused Mr. Yu., the witness Mr. T. and the attesting witnesses, who did not mention the author's involvement in the crime. The attesting witnesses were not summoned to testify in court, although they resided in Bekabad and were present in the city at the relevant time. They were strictly prohibited from testifying in court. Mr. Yu.'s guilty plea was a result of intense torture. In his initial statements, Mr. Yu. denied the author's involvement. Mr. Yu. intended to submit a written claim to the investigator explaining that he had falsely testified against the author, but he did not finish it, fearing that he would be tortured. The author participated in Mr. Yu.'s upbringing and is married to his sister. In court, Mr. Yu. begged the author's relatives to forgive him for having testified against the author. Furthermore, Mr. Yu.'s arrest record and the record of a violation of the customs legislation should not be considered as valid evidence against the author because the author's name is not mentioned there. The author's relative from Tajikistan was questioned repeatedly in connection with phone calls exchanged with the author but his involvement in the crime was not confirmed.

5.12 The author reiterates his claim about the excessive length of the proceedings. He adds that no investigative activities with his participation were conducted during his detention in the National Security Service investigation ward. Although the pretrial investigation term expired on 8 January 2013, no action was taken until 20 May 2013. In the intervening period, his and his counsel's motions and requests that were signed by the investigator upon delivery disappeared from the case file.

Additional submission from the State party

6.1 On 4 January 2016, the State party submitted that the author's claims should be dismissed as unsubstantiated. The State party reiterates the facts of the case, particularly that the author and Mr. Yu. were arrested on 8 August 2012 and their detention was authorized by a decision of Kibraisk District Court on 10 August 2012. The court proceedings lasted from 19 April to 6 June 2013, in compliance with the requirement under article 405 (2) of the Code of Criminal Procedure that they should not exceed two months. The first-instance court questioned the co-accused, the author's brother, Mr. T., Mr. Yus., Mr. Sh. and Mr. S., who had a connection with the crime. The court examined written evidence that had been put in the case file at the pretrial investigation stage; the parties made no remarks or comments in that connection. The court considered all the counsel's motions, such as to conduct a medical examination in relation to Mr. Yu., to question other witnesses in court, including the attesting witnesses, and to append complaints about misconduct by customs, police and National Security Service officials to the case file. After consideration, the court decided that the motions were not relevant to the case and dismissed them, in accordance with article 438 of the Code of Criminal Procedure.

6.2 On 10 October 2013, Tashkent Regional Court upheld the author's conviction. According to the case file and the conviction, the author was found guilty based on statements by the witnesses questioned during the investigation and court proceedings, the crime report, the record of the circumstances established in the course of the covert operation and a related scheme, the record of the physical evidence examination and of the weight of the physical evidence, expert evidence No. 69 of 3 August 2013, cross-examination records and other written evidence. In court, the accused Mr. Yu. stated that he had testified against the author under pressure from law enforcement authorities during the investigation and that the author had not been involved in the crime. The first-instance court critically assessed Mr. Yu.'s testimony in court. It noted that Mr. Yu. had testified in the presence of his lawyer, when questioned as a suspect, as an accused person and in the face-to-face confrontation with the author, and that neither Mr. Yu. nor his lawyer had complained about the alleged pressure by law enforcement officials. The author's claims

were also critically assessed, and it was concluded that they did not correspond to the reality and had been made in order to avoid criminal liability.

Issues and proceedings before the Committee

Consideration of admissibility

7.1 Before examining any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the communication is admissible under the Optional Protocol.

7.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

7.3 The Committee notes the State party's argument that the author's claims with respect to articles 7, 9 and 14 of the Covenant should be declared inadmissible as unsubstantiated. In this regard, the Committee notes the State party's specific contention that the author never complained before the national authorities about the length of the pretrial investigation and the length of the trial. In view of the total length of the proceedings and the explanations by the parties, and in the absence of any other pertinent information on file, the Committee considers that the author's claim under article 14 (3) (c) is insufficiently substantiated for the purposes of admissibility, and is therefore inadmissible under article 2 of the Optional Protocol.

7.4 With regard to the author's remaining claims, under articles 7, 9 (1), and 14 (3) (b), (e) and (g) of the Covenant, the Committee takes note of the author's assertion that he has exhausted all effective domestic remedies available to him. In the absence of any objection by the State party in this connection, the Committee considers that the requirements of article 5 (2) (b) of the Optional Protocol have been met.

7.5 The Committee considers that otherwise the author has provided detailed information and has sufficiently substantiated his remaining claims under articles 7, 9 (1), and 14 (3) (b), (e) and (g) of the Covenant for the purposes of admissibility, and proceeds to its consideration of the merits.

Consideration of the merits

8.1 The Committee has considered the communication in the light of all the information submitted to it by the parties, in accordance with article 5 (1) of the Optional Protocol.

8.2 The Committee notes the author's claim, under articles 7 and 14 (3) (g) of the Covenant, that law enforcement officials tortured him while he was in detention between August and November 2012, to force him to testify against himself. The Committee notes that the author provides a detailed account of the different types of torture to which he was subjected, and copies of his and his counsel's complaints to various authorities concerning those violations. It takes note of the author's statement before Bekabad City Court that he would be able to identify the torturers. It also notes the author's brother's statement before Bekabad City Court that he saw the author, unconscious, in the temporary detention facility. The Committee further notes that the State party refutes these allegations, principally because it denies that the author was detained before 8 August 2012 and contends that he did not complain about the use of torture to the investigator or through his counsel in the subsequent detention period. The Committee notes, on the other hand, that the State party did not deny receipt of the counsel's complaint to the investigator, dated 13 December 2013, claiming that the author had been forced to confess under torture, which was dismissed the following day on the grounds that incriminating evidence had been obtained through different sources. The Committee also notes the State party's submission that the author's complaints were critically assessed by the trial court but were rejected as "not corresponding to the reality" and "made in order to avoid criminal liability". The Committee further notes that the material before it shows that no independent inquiry has been conducted by the State party's authorities and that the counsel's requests to medically examine the author's injuries were not previously addressed during the investigation or the trial.

8.3 The Committee recalls that, once a complaint about ill-treatment contrary to article 7 has been filed, the State party concerned must investigate it promptly and impartially.[7] The Committee also recalls that the State party is responsible for the security of all persons held in detention, and that when there are allegations of torture and mistreatment, it is incumbent on the State party to produce evidence refuting the author's allegations.[8] In the absence of any thorough explanation from the State party that its authorities did address the torture allegations advanced by the author expeditiously, independently and adequately, in the context both of domestic criminal proceedings and of the present communication, the Committee has to give due weight to the author's allegations. Accordingly, the Committee concludes that the facts before it disclose a violation of the author's rights under articles 7 and 14 (3) (g) of the Covenant.[9]

8.4 The Committee has considered the author's claims under article 9 (1) of the Covenant regarding his deprivation of liberty without charge by law enforcement officials from 3 to 8 August 2012 and the unlawfulness of his pretrial detention. In regard to the first claim, the Committee notes that the counsel submitted several complaints to challenge the lawfulness of the author's detention, without success. The Committee takes note of the author's detailed description of his detention between 3 and 8 August 2012, particularly the fact that relatives and lawyers of the detainees waited for them outside the detention facilities and transmitted food to them. It also notes the statements by the author's brother, Mr. T. and Mr. Sh., before Bekabad City Court, that they were detained during this period. The Committee notes that the State party denies the author's detention prior to 8 August 2012, despite witness accounts to the contrary, and that it contends that the author was first questioned as a witness and only indicted and arrested on 8 August 2012. The Committee recalls that arrest within the meaning of article 9 need not involve a formal arrest as defined under domestic law.[10] It notes, in particular, that the State party has provided no pertinent explanations or evidence countering the submissions by the author.

8.5 The Committee also notes the author's claim that his detention was unlawful in its entirety, as it was imposed in violation of the criminal law. The Committee takes note of the explanation by the State party that the author was initially arrested under article 221 (1) of the Code of Criminal Procedure as a suspect caught immediately after having committed an offence and that, according to article 242 (2) of the Code of Criminal Procedure, pretrial detention may be imposed in regard to crimes punishable by less than three years' imprisonment if some criteria are met, namely if the accused has fled from the investigation and justice, the identity of the arrested suspect has not been established, the accused violated a previously determined restraint measure, the arrested suspect or the accused had no permanent residence in Uzbekistan, or the crime was committed while serving a sentence of arrest or imprisonment. The Committee notes, however, that the State party has not provided any explanation as to how the author's detention met such criteria. Furthermore, the Committee notes the author's claim that from 8 January to 6 June 2013, he was detained without any detention order, whereas the State party has provided neither any explanation in this regard, nor a copy of an order extending his detention or ordering his release. The Committee considers that in these circumstances, and in the absence of pertinent information or explanations from the State party, the facts as submitted amount to a violation of article 9 (1) of the Covenant.

8.6 On the author's claim about limited access to his lawyer, which hindered the preparation of his defence, the Committee notes the author's contention that the investigator did not allow him to meet with his counsel privately until 21 November 2012, that is, over three months after his arrest on 3 August 2012 and first questioning on 8 August 2012,

[7] See the Committee's general comment No. 20 (1992) on the prohibition of torture or cruel, inhuman or degrading treatment or punishment, para. 14.

[8] See communication No. 2079/2011, *Khadzhiev v. Turkmenistan*, Views adopted on 1 April 2015, para. 8.4.

[9] See, for example, communications No. 1304/2004, *Khoroshenko v. Russian Federation*, Views adopted on 29 March 2011, para. 9.5; No. 328/1988, *Zelaya Blanco v. Nicaragua*, Views adopted on 20 July 1994, para. 10.6; No. 1096/2002, *Kurbanov v. Tajikistan*, Views adopted on 6 November 2003, para. 7.4; and No. 330/1988, *Berry v. Jamaica*, Views adopted on 7 April 1994, para. 11.7.

[10] See the Committee's general comment No. 35 (2014) on liberty and security of person, para. 13.

Furthermore, the author claims that his counsel was prevented from representing him on 4 and 5 January 2013, notwithstanding that the charges against him were altered at that time. The Committee notes the State party's submission that the author and the counsel were given ample opportunity to meet confidentially, particularly on 8 August 2012. On the other hand, the Committee observes that the State party does not deny that the conditions in which the 8 August meeting was held — in the presence of officials and with devices recording the conversation — precluded confidentiality. Furthermore, the State party has not specified the dates, duration and conditions of other confidential meetings. The Committee also notes the State party's submission that the counsel was unavailable to represent the author on 4 January 2013 and did not object to the appointment of another lawyer, which is contested by the author. The Committee notes the author's submission that the counsel, who contacted the investigator daily, and particularly on 5 January 2013, was not informed of the alteration of the charges, and that the author was not allowed to contact his counsel in relation to this procedural action until 6 January 2013. It also notes that the State party has not explained why such a restriction on the author's contact with his counsel was necessary. It further notes that three new counts were added to the author's indictment, that he was questioned in relation to the new charges and that he refused to sign the questioning record and the new indictment in the absence of his trusted privately retained counsel. In the circumstances and on the basis of the material before it, the Committee considers that the facts as submitted reveal a violation of the author's rights under article 14 (3) (b) of the Covenant.

8.7 The Committee notes the author's claim that he was not allowed to obtain the attendance and questioning of a number of witnesses who could have confirmed his innocence, including the instigator A., and attesting witnesses, despite the availability of the latter, whereas all witnesses against him were heard by the court. In particular, Bekabad City Court rejected the counsel's motion to call additional witnesses on the grounds that they had not been identified as such by the investigation.

8.8 The Committee recalls that article 14 (3) (e) of the Covenant guarantees the right of accused persons to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. As an application of the principle of equality of arms, this guarantee is important for ensuring an effective defence by the accused and his or her counsel and thus guarantees the accused the same legal powers of compelling the attendance of witnesses and of examining or cross-examining any witnesses as are available to the prosecution. It does not, however, provide an unlimited right to obtain the attendance of any witness requested by the accused or his or her counsel, but only a right to have witnesses admitted that are relevant for the defence, and to be given a proper opportunity to question and challenge witnesses against them at some stage of the proceedings.[11]

8.9 The Committee notes the State party's contention that all witnesses cognizant of the events were questioned, that two witnesses were questioned additionally at the counsel's request, that it was impossible to establish the identity and whereabouts of A., that no requests to question customs and National Security Service officials were submitted by the author or his counsel after studying the case file, and that, in any event, questioning of other witnesses was not deemed necessary or relevant by the investigator and Bekabad City Court. The Committee notes, however, that the majority of the witnesses whose questioning was requested by the author and his counsel were not questioned at the hearings of Bekabad City Court and Tashkent Regional Court, and that the State party did not provide any reasons for not allowing those witnesses to be questioned. In these circumstances, the Committee concludes that the facts as submitted reveal a violation of the author's rights under article 14 (3) (e) of the Covenant.

9. The Committee, acting under article 5 (4) of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of articles 7, 9 (1), and 14 (3) (b), (e) and (g) of the Covenant.

[11] See the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial, para. 39.

10. Pursuant to article 2 (3) (a) of the Covenant, the State party is under an obligation to provide the author with an effective remedy. This requires that States parties make full reparation to individuals whose Covenant rights have been violated. In the present case, the State party is under an obligation: (a) to quash the author's conviction and its attendant consequences, including terminating without delay his incarceration on that basis, and, if necessary, conduct a new trial, in accordance with the principles of fair hearings, presumption of innocence and other procedural safeguards; and (b) to conduct a full and effective investigation into the author's allegations of torture, to prosecute the perpetrators and punish them with appropriate sanctions, and to provide adequate compensation and appropriate measures of satisfaction. The State party is also under an obligation to take all steps necessary to prevent similar violations from occurring in the future.

11. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when it has been determined that a violation has occurred, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is also requested to publish the present Views and to have them translated into the official language of the State party and widely disseminated.